

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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AFRICAN AMERICA INMATES OF
CCA OF SOUTHERN NEVADA
DETENTION CENTER, *et al.*,

Petitioners,

v.

PRADO, *et al.*,

Respondents.

Case No. 2:12-cv-00468-MMD-VCF

ORDER

Petitioners have submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 and an application for leave to proceed *in forma pauperis*. (dkt. no. 1, 5.) Based on the information concerning petitioner Griffin's financial status, the court finds that the motion to proceed *in forma pauperis* should be granted. Petitioners shall not be required to pay the filing fee for their habeas corpus petition.

Rule 4 of the Rules Governing Section 2254 Cases requires the court to make a preliminary review of each petition for writ of habeas corpus. The court must summarily dismiss a petition "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court" Habeas Rule 4; *O'Brenski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990); *see also Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990). Rules Governing Section 2254 Cases in the United States District Courts are appropriately applied to proceedings undertaken pursuant to 28 U.S.C. § 2241. Thus, the court conducts the same initial review of the petition even if it arises under 28 U.S.C. § 2241.

1 “The purpose of habeas corpus is to test the legality of detention.” *Arias v.*
2 *Rogers*, 676 F.2d 1139, 1142 (7th Cir. 1982). Pretrial petitions for habeas corpus “are
3 properly brought under 28 U.S.C.A. § 2241, which applies to persons in custody
4 regardless of whether final judgment has been rendered and regardless of the present
5 status of the case pending against him.” *Dickerson v. Louisiana*, 816 F.2d 220, 224 (5th
6 Cir.), *cert. denied*, 484 U.S. 956 (1987). “It is well settled that in the absence of
7 exceptional circumstances in criminal cases the regular judicial procedure should be
8 followed and habeas corpus should not be granted in advance of trial.” *Jones v.*
9 *Perkins*, 245 U.S. 390, 391-92 (1918).

10 Here, petitioners state that their detention is illegal because respondents have
11 delayed, stolen, and tampered with their mail in connection with their notice of appeal in
12 another civil case. Petitioners also claim that the Federal Public Defender’s Office has
13 been advised of respondents’ actions, but that it has failed to remedy the problem. None
14 of petitioners’ allegations, under even the most liberal of construction, demonstrate that
15 their pretrial detention is illegal. Petitioners fail to set forth any facts showing that they
16 may be entitled to relief under § 2241. Therefore, the court dismisses the petition
17 pursuant to Rule 4 of the Rules Governing Section 2254 Cases because it plainly
18 appears that petitioners are not entitled to relief.

19 In order to proceed with an appeal, petitioners must receive a certificate of
20 appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v.*
21 *Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); *see also United States v. Mikels*, 236
22 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make “a substantial
23 showing of the denial of a constitutional right” to warrant a certificate of appealability. *Id.*;
24 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The petitioner
25 must demonstrate that reasonable jurists would find the district court’s assessment of the
26 constitutional claims debatable or wrong.” *Id.* (*quoting Slack*, 529 U.S. at 484). In order
27 to meet this threshold inquiry, the petitioner has the burden of demonstrating that the
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1 issues are debatable among jurists of reason; that a court could resolve the issues
2 differently; or that the questions are adequate to deserve encouragement to proceed
3 further. *Id.* This court has considered the issues raised by petitioners, with respect to
4 whether they satisfy the standard for issuance of a certificate of appealability, and
5 determines that none meet that standard. The court will therefore deny petitioners a
6 certificate of appealability.

7 **IT IS THEREFORE ORDERED** that petitioner Griffin's motion to proceed *in forma*
8 *pauperis* (DKT. NO. No. 5) is **GRANTED**.

9 **IT IS FURTHER ORDERED** that the petition (dkt. no. No. 1) is **DISMISSED** under
10 Rule 4 of the Rules Governing Section 2254 Cases.

11 **IT IS FURTHER ORDERED** that petitioners' motion for the appointment of
12 counsel and motion to suppress (dkt. no. Nos. 2, 3) are **DENIED as moot**.

13 **IT IS FURTHER ORDERED** that the clerk **SHALL ENTER JUDGMENT**
14 **ACCORDINGLY**.

15 DATED THIS 8th day of August, 2012.

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18 UNITED STATES DISTRICT JUDGE
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